

REMARKS

Claims 1-12 are currently pending. Claims 2-7, and 9-12 are amended to place the claims in proper format. No new matter is introduced by these amendments. With respect to claim 12, applicant has amended the claim to be in proper statutory format.

Applicant reserves the right to file a divisional application claiming the subject matter of the non-elected claims which divisional application claims priority to the present invention.

The Office Action mailed on July 23, 2004 provides that restriction to one of the following inventions is required under 35 U.S.C. §§121 and 372:

“Group I, claim(s) 1-2, drawn to oil extracted from the seeds of *Momordica charantiqa L* [sic; *charantia L.*] having specific ingredients.

Group II, claim(s) 3-7, drawn to a mixture of oil with other oil components.

Group III, claim(s) 8-11, drawn to a process for the extraction of seeds which does not require the specifics of Inventions I or II.”

The applicant provisionally elects for prosecution the invention of Group I (claims 1-2). Applicant believes that the restriction requirement is improper and therefore makes the above election with traverse.

The Examiner contends that the “restriction is proper since the various groups lack a single general inventive concept in view of the two documents submitted in the PCT...which articles anticipate the claimed invention 1.” The publication by Tandon and Hasan (*J. Indian Chem. Soc.*, Vol. LIII, November 1976) is directed to a study of *Cucumis melo momordica* seed oil and not to *Momordica charantia L.* as claimed in the instant invention. The publication by Armougom, et al. (*OCL* Vol. 5, No. 4, 1998) relates to several different types of *Momordica charantia*; however, none of those listed in the comparison of Table 4 have all of the components as claimed in instant application. Since the oil extracted from the seeds of *Momordica charantia L.* is a key element in all of the claims, applicant respectfully requests reconsideration and removal of the restriction requirement.

Furthermore, applicant respectfully submits that for a restriction requirement to be proper, MPEP §803, is clear that "there are two criteria for restriction between patentably distinct

"inventions" as follows:

- "(1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required . . ." (emphasis added)

Applicant respectfully submits that undue diverse searching would not be required and all claims should be examined together. Applicant asserts that since the claims relate to oil from the seeds of *Momordica charantia L.*, there is no serious burden on the Examiner to examine the claims as a whole.

For the foregoing reasons, it is respectfully submitted that the restriction requirement should be withdrawn and an action on the merits of all the claims is respectfully requested.

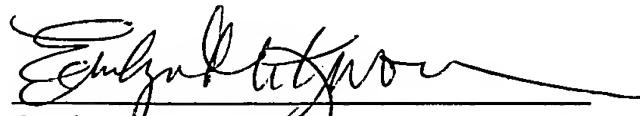
AUTHORIZATION

No fees are believed necessary in connection with this response. While applicant believes no extension of time to be necessary for this Response, should an extension of time be required, such extension is petitioned. The Commissioner is authorized to charge any fees or credit any overpayments which may be required for this paper to Deposit Account Number 13-4500, Order No. 3097-4007. A DUPLICATE COPY OF THIS PAPER IS ATTACHED.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 3097-4007. A DUPLICATE COPY OF THIS PAPER IS ATTACHED.

Dated: August 19, 2004

By:



Evelyn M. Kwon
Registration No. 54,246

MORGAN & FINNEGAN
3 World Financial Center
New York, New York 10281-2101
(212) 415-8700
(212) 415-8701 Facsimile